



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 10, 2014

Ms. Savannah Gonzalez
Assistant District Attorney
Hidalgo County Criminal District Attorney's Office
100 North Closner, Room 303
Edinburg, Texas 78539

OR2014-11875

Dear Ms. Gonzalez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 528584.

The Hidalgo County Sheriff's Office (the "sheriff's office") received a request for the personnel file of a former sheriff's office employee. You state you have released some of the information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains a police officer's Texas Commission on Law Enforcement ("TCOLE") identification number. In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand the officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in the commissioner's electronic

¹Although you raise section 552.1175 of the Government Code for the information of the former employee at issue, we note section 552.117 is the proper exception to raise for information held in an employment context.

database and may be used as an access device number on the TCOLE website. Accordingly, we find the TCOLE number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE number in the submitted information is not subject to the Act and need not be released to the requestor.

Next, we note the information we have marked is not responsive to the instant request for information. This ruling does not address the public availability of any information not responsive to the present request, and the sheriff's office need not release any non-responsive information in response to this request.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706. Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 at 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state the submitted information contains copies of the sheriff's office's internal policies and procedures, including internal memoranda issued to sheriff's office personnel regarding the investigations of crime in Hidalgo County. You argue release of this information would undermine the effectiveness of those internal policies and procedures. Upon review, we find you have not demonstrated how release of any of the submitted information would interfere with law enforcement or crime prevention. Accordingly, the sheriff's office may not withhold any of the submitted information under section 552.108(b)(1).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides, in relevant part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(a)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. The information you seek to withhold consists of a report of the results of a drug test. We note section 159.001 of the MPA defines “patient” as “a person who, to receive medical care, consults with or is seen by a physician.” *Id.* § 159.001(3). Because the individual at issue in the report did not receive medical care in the administration of the drug test, this individual is not a patient for purposes of section 159.002. Thus, we find you have not demonstrated the information at issue consists of a communication between a physician and a patient; records of the identity, diagnosis, evaluation, or treatment of a patient; or information obtained from such communications or records. *See id.* § 159.002(a)-(c). Therefore, the sheriff’s office may not withhold any of the information at issue under section 552.101 of the Government Code on the basis of the MPA.

Section 552.101 of the Government Code also encompasses section 1701.306 of the Occupations Code, which makes an L-2 Declaration of Medical Condition form required by TCOLE confidential. Section 1701.306 provides the following:

(a) [TCOLE] may not issue a license to a person unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a blood test or other medical test.

(b) An agency hiring a person for whom a license is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCOLE]. A declaration is not public information.

Id. § 1701.306(a)-(b). Therefore, the sheriff's office must withhold the submitted L-2 declaration form we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.²

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to TCOLE under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) All information submitted to [TCOLE] under this subchapter is confidential and is not subject to disclosure under [the Act], unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a [TCOLE] member or other person may not release information submitted under this subchapter.

Id. § 1701.454. The submitted information contains an F-5 Report of Separation of Licensee. However, the submitted information indicates the officer at issue was terminated due to violations of the law other than traffic offenses. Additionally, we find none of the remaining information was submitted to TCOLE pursuant to subchapter J of chapter 1701 of the Occupations Code. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.101 in conjunction with section 1701.454 of the Occupations Code.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov’t Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. We note section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Further, CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find the information we marked consists of CHRI the sheriff’s office must withhold under section 552.101 in conjunction with section 411.083 of the Government Code.³

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). However, section 560.002 of the Government Code provides, “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). We have marked the fingerprints in the submitted information. You do not inform us, and the submitted information does not indicate, section 560.002 permits disclosure of the fingerprint information. Therefore, the sheriff’s office must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. However, we find you have failed to demonstrate any of the remaining information is subject to section 560.003 of the Government Code. Thus, the sheriff’s office

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

may not withhold any portion of the remaining information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office also has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). We note, however, the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.⁴ However, you have failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). We understand you to assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 of the Government Code as discussed above. In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court of appeals ruled the privacy test under section 552.102(a) is the same as the

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Industrial Foundation privacy test. However, the Texas Supreme Court has expressly disagreed with *Hubert's* interpretation of section 552.102(a) and held the privacy standard under section 552.102(a) differs from the *Industrial Foundation* test under section 552.101. See *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The supreme court then considered the applicability of section 552.102(a) and held it excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. See *id.* at 348. Upon review, we find the sheriff's office must withhold the dates of birth we have marked under section 552.102(a).⁵ However, we find none of the remaining information is subject to section 552.102(a) of the Government Code and none of it may be withheld on that basis.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. Gov't Code § 552.117(a)(2). We note a post office box number is not a "home address" for purposes of section 552.117(a). See Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed at home). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. If the former employee at issue is currently a licensed peace officer, the sheriff's office must withhold the information we have marked under section 552.117(a)(2).⁶ However, if the former employee is not currently a licensed peace officer, the information we have marked may not be withheld under section 552.117(a)(2). Furthermore, we find none of the remaining information is subject to section 552.117(a)(2) of the Government Code, and the sheriff's office may not withhold it on that basis.

To the extent the former employee whose information is at issue is not a currently licensed peace officer, his personal information is subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) protects from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). You state, and the submitted information indicates, the former employee at issue has elected to keep his personal information confidential. Thus, to the extent the former employee whose information is at issue is not a currently licensed peace officer, the sheriff's office must withhold the information we marked under

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁶As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

section 552.117(a)(1) of the Government Code. However, we find none of the remaining information is subject to section 552.117(a)(1) of the Government Code, and none of it may be withheld on that basis.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.⁷ *Id.* § 552.1175. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure” and “federal judges and state judges as defined by Section 13.0021, Election Code[.]” *Id.* § 552.1175(a)(1), (10). Some of the remaining information pertains to individuals who may be subject to section 552.1175. Thus, to the extent the information we have marked pertains to individuals subject to section 552.1175(a), and the individuals at issue elect to restrict access to this information in accordance with section 552.1175(b), the sheriff’s office must withhold the information we have marked under section 552.1175 of the Government Code. If the individuals whose information we have marked are not subject to section 552.1175(a) or no election is made, the sheriff’s office may not withhold this information under section 552.1175 of the Government Code.

Section 552.130 of the Government Code, which provides information relating to a motor vehicle operator’s or driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130. Upon review, we find the sheriff’s office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the submitted TCOLE personal identification numbers are not subject to the Act and need not be released to the requestor. The sheriff’s office must withhold the information we have marked under section 552.101 in conjunction with the following: (1) section 1701.306 of the Occupations Code, (2) section 411.083 of the Government Code, (3) section 560.003 of the Government Code, and (4) common-law privacy. The sheriff’s office must withhold the dates of birth we have marked under section 552.102(a) of the Government Code. Additionally, if the former employee at issue is currently a licensed peace officer, the sheriff’s office must withhold the information we have marked under section 552.117(a)(2) of the Government Code. If the former employee is not currently a licensed peace officer, the sheriff’s office must withhold the information we have marked under section 552.117(a)(1) of the Government Code. To the extent the information we have marked pertains to individuals subject to section 552.1175(a), and the individuals at issue elect to restrict access to this information in accordance with section 552.1175(b), the sheriff’s office must withhold the information we have marked under section 552.1175 of

⁷The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

the Government Code. Finally, the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/tch

Ref: ID# 528584

Enc. Submitted documents

c: Requestor
(w/o enclosures)